

William Michael Cunningham

Economist and Impact Investing Researcher



July 20, 2022

Ms. Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System,
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Docket No. R-1775, RIN 7100-AG34

Dear Ms. Misback,

We understand that "The Board is inviting comment on a proposed regulation that would implement the Adjustable Interest Rate (LIBOR) Act. The proposed rule would establish benchmark replacements for contracts governed by U.S. law that reference certain tenors of U.S. dollar LIBOR (the overnight and one-, three-, six-, and 12-month tenors) and that do not have terms that provide for the use of a clearly defined and practicable replacement benchmark rate following the first London banking day after June 30, 2023. The proposed rule also would provide additional definitions and clarifications consistent with the Adjustable Interest Rate (LIBOR) Act."

We provide comments below. Our understanding is borne of significant experience, knowledge which has given the firm in depth comprehension of these issues. We have expertise that is unmatched in either duration or depth:

Federal Appeals and lower courts have accepted several "Amicus Curiae" or "Friend of the Court" briefs we filed in signal cases concerning financial marketplace structure and fraud cases:

The U.S. Court of Appeals for the District of Columbia Circuit accepted a "Friend of the Court" brief filed by William Michael Cunningham in Mozilla Corporation vs. the Federal Communications Commission (net neutrality). <https://www.prlog.org/12729944-william-michael-cunningham-files-amicus-brief-in-net-neutrality-case-18-cv-1051.html>

Amicus Brief in Fiduciary Rule Case (16-cv-1035): <https://www.prlog.org/12573252-william-michael-cunningham-files-amicus-brief-in-fiduciary-rule-case-16-cv-1035.html>

Amicus Brief in Met Life v FSOC (16-5086): <https://www.prlog.org/12570202-william-michael-cunningham-files-amicus-brief-in-met-life-fsoc-16-5086.html>

Amicus Brief in Galvin v SEC (15-1150): <https://www.prlog.org/12499745-william-michael-cunningham-files-amicus-brief-in-galvin-sec-15-1150.html>

Amicus Brief in US vs. S&P (US District Court, Central District CA):
<https://www.prlog.org/12256590-william-michael-cunningham-files-amicus-brief-in-us-vs-sp-us-district-court-central-district-ca.html>

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Revised brief in SEC vs. Citigroup (2nd Cir Ct of Ap):

<https://www.prlog.org/11948760-william-michael-cunningham-files-revised-brief-in-sec-vs-citigroup-2nd-cir-ct-of-ap.html>

We also have significant relevant experience:

- We developed the first targeted Mortgage-backed Security investment CRA securitization, an MBS pool backed by loans from minority financial institutions. We designed and created the investment in 1992. (See: <https://www.creativeinvest.com/wglelca.pdf>)
- In 1994, we suggested the Fed purchase mortgage-backed securities issued by Black owned banks as a way to address housing inequality while enhancing the impact of monetary policy, a suggestion the Fed ignored until majority-owned banks could profit.
- In 1995, we suggested the creation of the Community Reinvestment Act (CRA) investment test as a way to evaluate community development performance, another suggestion that was ignored until non-Black firms could profit.
- In 1993, at the First Annual Greenlining Institute Conference on Community Development, we suggested the creation of government backed venture capital funds to take first risk position in the provision of equity capital to small, minority businesses on Georgia Avenue in NW Washington, DC. This morphed into the New Markets Tax Credit program, a real estate focused "community development" program that has fueled gentrification.
- Mr. Cunningham is an unaffiliated member of NARALO, the North American Regional At-Large Organization of ICANN, the Internet Corporation for Assigned Names and Numbers.
- Mr. Cunningham's presentation at the Texas Association of African American Chambers of Commerce resulted in successful crowdfunding legislation for the State of Texas. <https://www.creativeinvest.com/TexasEconomicForecastCrowdfundingBill.pdf>
- On February 3, 2015, Mr. Cunningham commented on an effort by Apple Computer to utilize women and minority-owned brokerage firms: <http://www.usatoday.com/story/tech/2015/02/03/apple-debt-offering-minority-firms-jesse-jackson-diversity-silicon-valley/22805673/>

Mr. Cunningham has published articles on banking issues in the Washington Post (see:

https://www.washingtonpost.com/business/capitalbusiness/commentary-crowdfunding-can-provide-new-financing-option-for-minority-firms/2012/06/01/gJQAThq7BV_story.html?utm_term=.0e8c32762d95)

and in the American Banker Newspaper (see: <https://www.americanbanker.com/opinion/time-to-clean-house-at-wells-fargo> , <https://www.americanbanker.com/opinion/cryptocurrency-regulation-is-a-job-for-treasury> and <https://www.americanbanker.com/opinion/blow-up-the-cra-and-start-from-scratch>).

We are the premier firm in understanding and analyzing ESG trends as they impact global economic systems. Our research has focused on "long-term changes that will affect and influence the economy, financial system, society and environment at large." For more information, please see: [Global Market Turmoil Graphic](#) and [Financial Crisis Calendar Graphic](#), December, 2008 and November, 2009.

Our comments follow a series of forecasts we have issued:

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- On July 3, 1993, Mr. Cunningham wrote to US Securities and Exchange Commissioner (SEC) Mary Schapiro to notify the Commission about a specific investing scam, the "Nigerian letter scam." A timely warning was not issued to the investing public, members of the public were damaged, and the SEC launched retaliatory regulatory actions against Mr. Cunningham. <https://www.creativeinvest.com/SECNigerianLetter.pdf>
- In October 1998, in a petition to the United States Court of Appeals for the District of Columbia Circuit in opposition to the Citigroup/Travelers merger, we cited evidence that growing financial market malfeasance greatly exacerbated risks in financial markets, reducing the safety and soundness of large financial institutions. We went on to note that:
 - *"The nature of financial market activities is such that significant dislocations can and do occur quickly, with great force. These dislocations strike across institutional lines. That is, they affect both banks and securities firms. The financial institution regulatory structure is not in place to effectively evaluate these risks, however. Given this, the public is at risk."*
 - On July 25, 2012, the New York Times reported that Sanford I Weill, former chairman and chief executive of defendant Citigroup "called for a wall between a bank's deposit-taking operations and its risky trading businesses. In other words, he would like to resurrect the regulation (Glass-Steagall) that he once fought."
- On June 15, 2000, we testified before the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (GSE's) of the US Congress. We suggested that the GSE's (Fannie Mae and Freddie Mac) be subject to a thorough "Social Audit." A Social Audit is an examination of the performance of an enterprise relative to certain social objectives. It also includes a review of ethical practices at the firm. Had they been subject to this audit, certain flaws in their operation which led to their failure, including ethical shortcomings, would have been revealed earlier.
- In 2001, Mr. Cunningham helped create the first wide scale home mortgage loan modification project. See: *Property Flipping Remediation Yields Investment-grade Security* at: <http://www.creativeinvest.com/remediation.pdf>
- On December 22, 2003, statistical models we created using the Fully Adjusted Return[®] Methodology signaled the probability of system-wide economic and market failure. See page 6: <http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf>
- On Monday, April 11, 2005, we testified before Judge William H. Pauley III in the U.S. District Court for the Southern District of New York on behalf of investors at a fairness hearing regarding the \$1.4 billion-dollar Global Research Analyst Settlement.
- In 2005, we served as an expert witness for homeowners in a case against PMI Group, Credit Suisse First Boston, Moody's, Standard and Poor's, Fairbanks Capital Corporation, Select Portfolio Servicing, US Bank National Association, as Trustee of CSFB ABS Series 2002-HEI, et. al., in the New Jersey Superior Court Law Division - Monmouth County. Our expert witness

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testimony held corporate parties responsible for facilitating predatory lending practices. Had this single case been successful, we believe the financial crisis of 2008 would not have occurred.

- On December 22, 2005, Mr. Cunningham met with Ms. Elaine M. Hartmann of the Division of Market Regulation at the U.S. Securities and Exchange Commission. At that meeting, he issued a strongly worded warning that system-wide economic and market failure was a growing possibility.
- On June 18, 2009, Mr. Cunningham testified before the House Ways and Means Select Revenue Measures Subcommittee at a joint hearing with the Subcommittee on Domestic Monetary Policy and Technology of the Financial Services Committee: Testimony on the New Markets Tax Credit Program. (See: <https://financialservices.house.gov/media/file/hearings/111/printed%20hearings/111-47.pdf>)
- On August 13, 2015, Mr. Cunningham provided testimony on the Department of Labor's Fiduciary Rule. Online at <https://youtu.be/kOGS-DdLYe0>
- Our June 11, 2016 forecast predicted the election of Donald J. Trump. See: Why Trump Will Win. <https://www.linkedin.com/pulse/why-trump-win-william-michael-cunningham-am-mba/> and <https://www.linkedin.com/pulse/trumpism-william-michael-cunningham-am-mba/>
- We suggest you review our Maternal Mortality Reparation Facility for Black Women at <https://www.prlog.org/12876083-maternal-mortality-reparation-facility-for-black-women.html> and our proposal to create a \$50 billion-dollar Black Bank financing facility, outlined in Black Enterprise Magazine on October 21, 2019, online at <https://www.blackenterprise.com/black-banking-crisis-economist-offers-50-billion-solution/>

We incorporate these documents by reference.

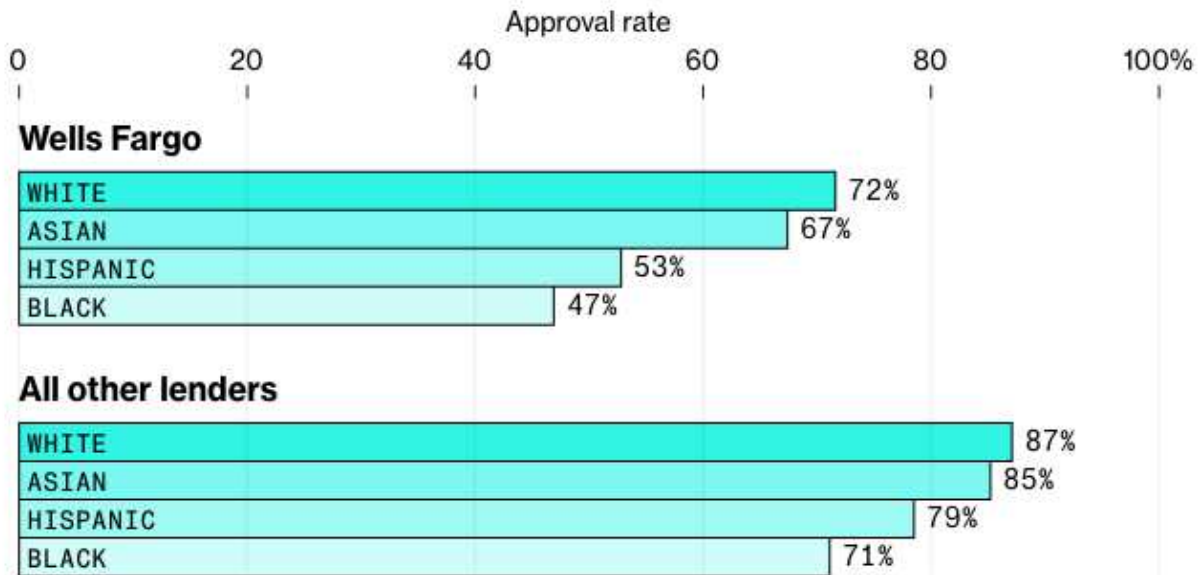
Information and Comment on Regulation Implementing the Adjustable Interest Rate (LIBOR) Act

The Board “would provide default U.S. dollar Libor replacements for potentially trillions of dollars of older financial contracts still tied to the pricing benchmark, which is slated to be fully discontinued in less than a year.”

The proposal creates a fall back for LIBOR that insulates firms from the consequences of faulty decisions. It does so mainly for large, non-minority financial institutions, who receive 95% of the benefit from this regulation. Black and to a lesser extent, minority firms and individuals, unable to fairly obtain LIBOR-based financing, do not benefit.

Disparity by Lender

Wells Fargo approved fewer than half of Black homeowners' refinancing applications in 2020.



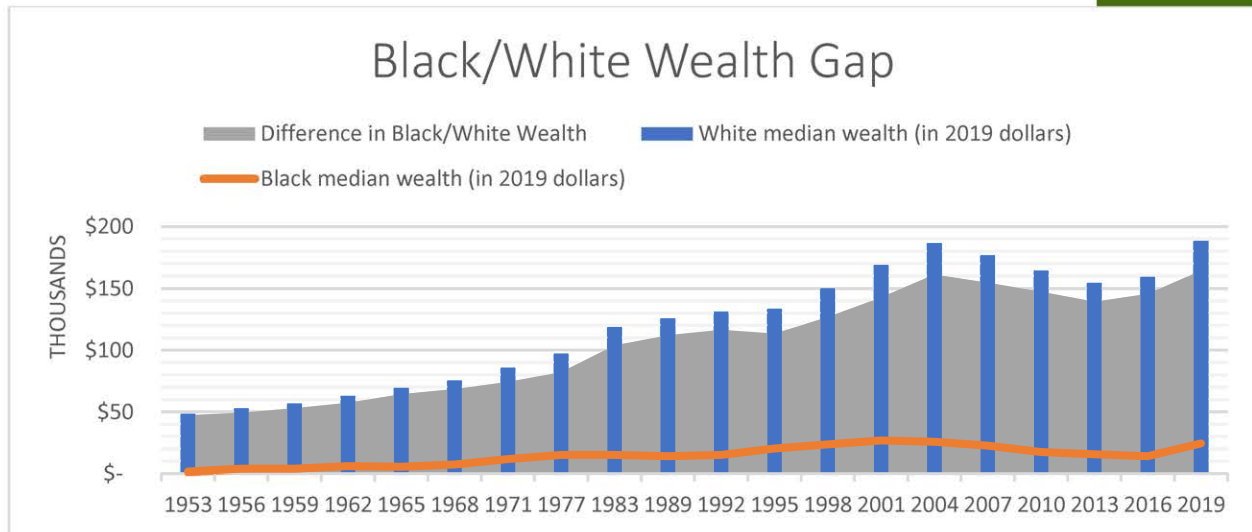
Source: Bloomberg analysis of Home Mortgage Disclosure Act data for 8 million completed applications to refinance conventional loans in 2020.

In this sense, the policy rewards discriminatory behavior.

Further, the policy rewards inefficient financial institution supervisory behavior. The LIBOR crisis was generated by a collusive agreement in restraint of trade resulting in LIBOR rate manipulation and is a direct result of the biggest regulatory failure in the history of financial markets. As a market failure, it is second only to the failure to protect human lives during the Atlantic slave trade.

The proposed policy is a violation of the Equal Protection Clause of the US Constitution. The law upon which it is based may, as a result, be unconstitutional.

Our economic models (and the charts below) show clearly the effectiveness of the existing regulatory frameworks and the outcome of this effort. Fully detailing and describing these model outcomes would serve no purpose other than to enrich a set of non-African American individuals and entities while simultaneously damaging the public



Note: Figures refer to net worth for the median family, which the Federal Reserve defines similarly to the U.S. Census Bureau's "household." Data is missing for 1974, 1980 and 1986. Source: Moritz Kuhn, Moritz Schularick and Ulrike I. Steins, "Income and Wealth Inequality in America, 1949-2016," and Federal Reserve Survey of Consumer Finances.

While we decline to fully answer the queries posed, note the following: as Mr. Cunningham has demonstrated, inadequate consideration of the public interest damaged the public and investors.¹

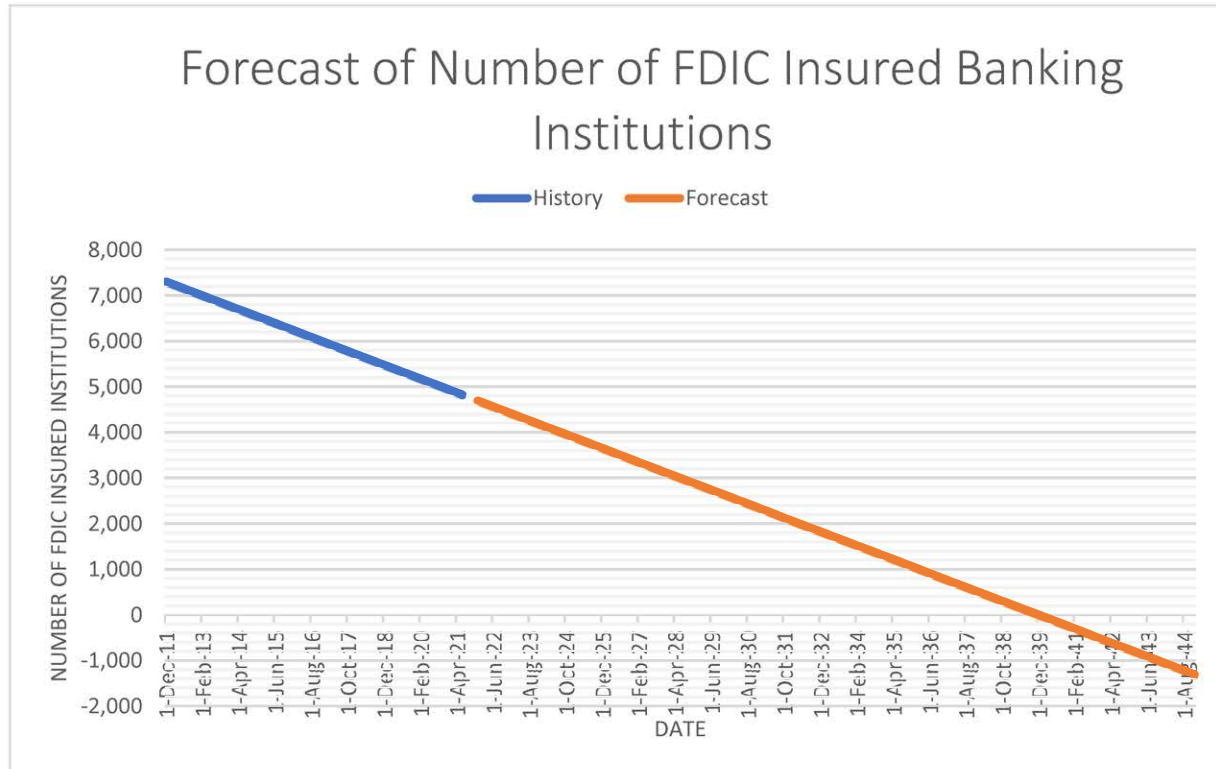
¹ For example, see: Fed Unveils Stricter Trading Rules Amid Fallout from Ethics Scandal. Jeanna Smialek, Oct. 21, 2021. The New York Times. Online at: <https://www.nytimes.com/2021/10/21/business/federal-reserve-trading-ethics.html> and Bankers Cast Doubt On Key Rate Amid Crisis

<https://www.wsj.com/articles/SB120831164167818299?reflink=desktopwebshare> via @WSJ

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Current regulatory practices protect the monetary interest of a narrow set of non-African American persons, fail to protect the general public, and damage the Country's long term economic prospects

These regulatory failings have real implications for the public. Banking regulators have abdicated their responsibility to consider the public interest, if that interest includes maintaining a fair, competitive financial services industry. Our forecast indicates that by 12/31/2039, if current trends continue in a



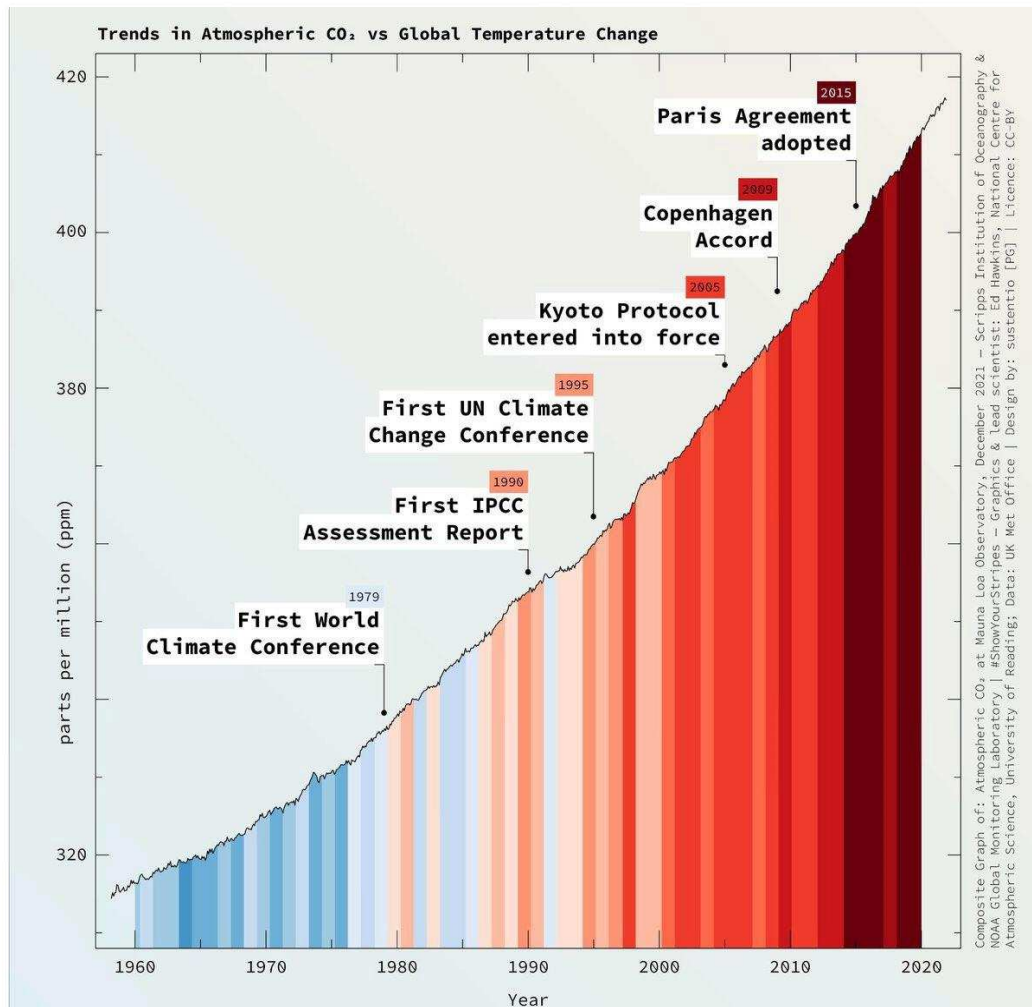
linear manner, the number of FDIC insured institutions will be approximately 1-2. Note that, with growing competition from fintech firms and alternatives, like bitcoin, this may imply the wholesale exit of banking institutions from both the FDIC and Federal Reserve systems. This would not be in the public interest.

Regulators have even failed to apply normalized standards of ethics, important for banking system confidence. (See Footnote 1).

The FRB is simply unable to regulate in the public interest, and, therefore, cannot appropriately implement this policy. While we have created several innovations² and designed policies³ to effectively address these issues, the fact remains: no solution to the issues presented will be accepted unless non-Black institutions and individuals are positioned to profit from them. Providing any answers to the questions posed would be a futile gesture from a justice and fairness perspective.

Environmental Factors

The FRB has not “identified the effects of climate change” and the impediments to a low carbon economy transition that the lax LIBOR replacement policy will impose on society.



² See: *The JOBS Act: Crowdfunding Guide to Small Businesses and Startups 2nd Edition*.

https://www.amazon.com/dp/B01MT104U1/ref=cm_sw_r_tw_dp_N51QKTHKS32E53HZ251V

³ See: *Thriving as a Minority-Owned Business in Corporate America: Building a Pathway to Success for Minority*

Entrepreneurs 1st ed. https://www.amazon.com/dp/1484272390/ref=cm_sw_r_tw_dp_S19RDNY2TEC17NJZHHQ5

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